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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,813	05/30/2001	Gary W. Beall	29785/10000	6617
4743	7590	03/28/2005		
MARSHALL, GERSTEIN & BORUN LLP 6300 SEARS TOWER 233 S. WACKER DRIVE CHICAGO, IL 60606				
			EXAMINER PRYOR, ALTON NATHANIEL	
			ART UNIT 1616	PAPER NUMBER

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/867,813	BEALL, GARY W.	
	Examiner	Art Unit	
	Alton N. Pryor	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 27 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 9-22, 24, 27-33 and 37-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 14, 24, 42, 43 and 50 is/are allowed.
- 6) ☐ Claim(s) 9-13, 15-22, 27-33, 37-41, 44-49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's arguments filed 12/27/04 have been fully considered but they are not persuasive. See arguments below.

I. Rejection of claims 10,12,13,16,19-21,27,29,32,37,40,41 under 35 USC 102(b) as being anticipated by Lan (EP 0846661) will be maintained for reason on record and reason as follows. Applicant argues that Lan (page 6 lines 11-45) discloses a composition of smectite clay intercalated with an active material to be delivered to the body in a cosmetic carrier. Examiner disagrees with Applicant. Examiner argues that Lan teaches that the intercalate-smectite clay is used for the delivery of an active. Examiner argues that the active is dispersed in the carrier rather than being intercalated with the smectite clay.

Applicant argues that independent claims 10,27,32,33,37,44,46,48 require that claimed composition be intercalated with an intercalant consisting essentially of an organic surface modifier. Applicant argues that the phrase "consisting essentially of" limits the scope of a claim to materials / steps that do not materially affect the basic and novel characteristics of the invention. Applicant argues that the independent claims are not open to the inclusion of additives. Applicant further argues that the inclusion of actives would alter the invention from absorption of a chemical from the body to delivery of a chemical to the body. Applicant amended claims 10,27,32,33,37,44,46,48 to recite intercalate "consisting essentially of" the instant surface modifier molecules. Examiner argues that the instant intercalate in claims 10,27,32,33,37,44,46,48 is closed to the instant modifiers. However, the claim is open to the inclusion of additional ingredients such as active agents. Note that claims

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10,27,32,33,37,44,46,48 are only closed to the intercalant. Applicant argues that the purpose of the embodiment for the intercalant disclosed on page 6 of EP '661 is for delivery of a substrate such as active agents; whereas, Applicant argues that the purpose of intercalates and methods claimed herein is for absorption of allergen compound from plants such as poison ivy, poison oak, poison samae. In claims to the absorbent or composition, a statement to the absorbent's or composition's intended use has no patentable significance.

Applicant argues that the prior art composition applied to the skin does not inherently absorb allergens. Examiner disagrees with Applicant since both the prior art (Lan) and instant application disclose the same composition and since both teach the application of the composition to skin. Since prior art teaches application of the composition to skin, it is anticipated that the prior art composition applied to skin would result in the absorption of allergens.

II. Rejections of claims 9,11,15,17,18,22,28,30,31,33,38,39,48,49 under 35 USC 103(a) as being obvious over Lan will be maintained for reason on record and reason as follows. See arguments in I above.

III. Claims 14,24,42,43,50 are allowable for reason on record in paper dated 1/9/04.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alton Pryor
Primary Examiner
AU 1616